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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re L.M., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

L.G.,

Defendant and Appellant.

D074738

(Super. Ct. No. J519056C)

APPEAL from an order of the Superior Court of San Diego County, Edlene C.
McKenzie, Judge. Affirmed.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant
and Appellant L.G.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County
Counsel, and Patrice Plattner-Grainger, Deputy Counsel, for Plaintiff and Respondent.

L.G. appeals the juvenile court order terminating her parental rights to her minor daughter L.M. under Welfare and Institutions Code section 366.26.¹ L.G. contends the court erred by finding the beneficial parent-child relationship exception to adoption did not apply. We reject this contention and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

At her birth in December 2016, L.M. tested positive for methamphetamine and was placed in the neo-natal intensive care unit. Several days later, the San Diego County Health and Human Services Agency (Agency) filed a petition under section 300, subdivision (b) alleging L.M. was at risk of serious physical harm or illness due to L.G.'s substance abuse. Just a few months before L.M.'s birth, L.G.'s parental rights to two older children, L.M.'s half-siblings, were terminated and a permanency planning hearing was scheduled. That dependency began after L.G. was in a serious car accident while under the influence of alcohol and with one of her children in the vehicle.

L.G. admitted she used methamphetamine during her pregnancy with L.M. She also failed to complete substance abuse treatment ordered as part of the half-siblings' dependency proceeding. At the detention hearing, the court ordered L.M. detained out of L.G.'s care and found that placement with L.M.'s father was not appropriate because of his refusal to cooperate with the Agency and his lengthy criminal history. The court ordered supervised visitation for both parents and set a jurisdiction and disposition hearing.

¹ Subsequent statutory references are to the Welfare and Institutions Code.

In advance of that hearing, the Agency reported that L.M. had been placed in foster care and recommended that L.G. be denied reunification services under section 361.5 because of her failure to reunify with L.M.'s half-siblings.² The Agency recommended reunification services for L.M.'s father David. The court adopted the Agency's recommendations, denying L.G. services under section 361.5, subdivision (b)(10), and ordered reunification services for David and supervised visitation for both parents. L.G. unsuccessfully appealed the judgment denying her reunification services.

Before the six-month review, L.M.'s foster parents applied for de facto parent status, which the juvenile court granted.³ In its report for the review hearing, the Agency recommended David's reunification services be terminated. David had visited L.M. just three times after the jurisdiction and disposition hearing, missed drug tests, and failed to remain in contact with the Agency or make progress in his reunification services. The Agency recommended terminating parental rights and setting a permanency planning hearing. L.M.'s court appointed special advocate (CASA) also recommended terminating parental rights and setting the permanency planning hearing.

² Before the jurisdiction and disposition hearing in this case, the permanency planning hearing in the siblings' dependency proceedings took place and L.M.'s maternal aunt and uncle were appointed legal guardians of her half-siblings.

³ L.M.'s foster parents were also a certified foster family agency home, who received specialized training to care for children with behavioral or emotional issues and additional support from social workers.

The review hearing was continued several times and finally took place over two days in late February and the first week of March 2018. During the review period, L.G. visited with L.M. irregularly but was generally appropriate during visits. The Agency and L.M.'s CASA continued to recommend termination of parental rights. L.G. contested the recommendation and after an evidentiary hearing, the court terminated parental rights and David's reunification services, and set a permanency planning hearing for L.M.

Shortly after, the Agency approved the maternal relatives, and legal guardians of L.M.'s half-siblings, for placement of L.M. The maternal relatives were uncertain if they wanted to adopt L.M. because her half-siblings both had special needs and they had three children of their own. They requested a transition period of several weeks to determine whether they could handle another child. The Agency and L.M.'s de facto parents, however, had difficulty agreeing to a visitation schedule for the maternal relatives, who lived in Los Angeles.

As a result of the scheduling tensions, on Friday, April 6, 2018, the de facto parents notified the Agency they wanted 16-month-old L.M. removed from their home by the following Monday. The Agency arranged for a respite family to take placement of L.M. to continue the planned transition period, but the maternal relatives, feeling pressure to avoid L.M. being placed with strangers, took immediate placement. As a result of the de facto parents' decision to terminate placement without notice, the Agency decertified their home. In its report updating the court on the status of L.M.'s placement, the Agency noted that the de facto parents had also been difficult to work with earlier in the

dependency and were unsupportive of parent visits and facilitating parent involvement in L.M.'s developmental services.

The Agency also reported the move to the maternal relatives' home was traumatic for L.M., who cried and refused to drink water or juice. The relatives did not have a child care plan in place and had to take unplanned time off from work. The de facto parents remained in contact with the relatives and offered to help with the transition, despite their earlier request to abruptly terminate placement. The de facto parents also told the Agency's social worker they were still willing to have L.M. placed in their home if the maternal relatives were unable to care for her, and that they wanted to adopt L.M. if parental rights were terminated.

After the stressful transition to the maternal relatives' home, the relatives notified the Agency that they could not take placement of L.M. but would provide a transition period for her next home. L.M.'s attorney filed a motion with the court to remove the de facto parents' status. The Agency conducted additional interviews with the de facto parents and the certifying foster family agency to determine its position on the motion. This investigation concluded with a report to the court supporting the minor's counsel's motion. The Agency's report opined that the abrupt transition had been detrimental to L.M. and past difficulties with the de facto parents weighed in favor of removing their status.

In the meantime, the Agency placed L.M. in another foster home and initiated evaluation of the home of a paternal half-brother who lived outside the state and had come forward seeking placement. On May 1, 2018, the de facto parents filed a

competing petition under section 388 to maintain their de facto status and seeking placement of L.M. They argued that the Agency had been difficult to work with and that had they known that the maternal relatives were not certain about the placement of L.M. they would have remained her caregivers. The de facto parents also sought placement of L.M. as non-related extended family members and indicated that they wanted to adopt L.M. if she were freed for adoption.

At the initial hearing on the section 388 petition, the court found the de facto parents had made a prima facie showing and set an evidentiary hearing on the petition. In advance of the hearing, the Agency reported that L.M. was thriving in the home of her new foster family and the paternal half-brother seeking placement had visited L.M. and planned additional visits to prepare L.M. for a transition to his home if he were approved for placement. L.M.'s new foster family was also interested in adopting L.M. and had an approved adoptive home study. The Agency's final report before the hearing recommended denial of the de facto parents' petition and detailed additional difficulties with their ability to work with the Agency during the reunification period. After an evidentiary hearing, the juvenile court agreed with the Agency's position and denied the de facto parents' petition. The court also confirmed the permanency planning hearing for June 27, 2018.

In advance of that hearing, the Agency submitted an assessment report outlining L.G.'s visitation with L.M. since the prior review hearing. The report noted that the visits were mostly appropriate and somewhat consistent, but L.G. was often late or unable to confirm visits. The Agency's social worker opined that L.G.'s "contact with [L.M.] [was]

not frequent or regular enough for [L.M.] to look to [L.G.] as her primary attachment or to provide for her daily needs." The Agency reported that L.M. was both generally and specifically adoptable, that termination of parental rights would not be detrimental to L.M., who continued to thrive in her foster placement, and recommended a permanent plan of adoption for L.M. L.M.'s CASA also submitted a report echoing the Agency's position.

At the initial permanency planning hearing, L.G. contested the Agency's recommendation and the court set the matter for an evidentiary hearing in late August. Thereafter, L.G. continued to visit L.M. and L.G.'s personal well-being also improved. On August 9, 2018, she enrolled in a recovery program and began treatment for her substance abuse. The day before the evidentiary hearing, L.G. filed a section 388 petition asserting her circumstances had changed and requesting placement of L.M.

At the permanency planning hearing the next day, the juvenile court entered the Agency's and the CASA's reports into evidence and accepted the stipulated testimony of the Agency's social worker that L.M. had lived with her maternal half-siblings for 20 days. L.G. testified telephonically. In her testimony L.G. stated she had consistently visited L.M. throughout the dependency, but acknowledged her parental bond with L.M. had been broken. In closing, L.G.'s counsel argued a permanent plan of legal guardianship was in L.M.'s best interest to afford L.G. the opportunity to reunify with L.M. At the conclusion of the hearing, the juvenile court found that L.M. was likely to be adopted and that none of the statutory exceptions to adoptions applied. The court terminated L.G.'s and David's parental rights and referred L.M. for adoptive placement.

The court also rejected the de facto parents' request for placement and terminated their de facto status. L.G. timely appealed.

DISCUSSION

After reunification services are terminated, the focus of a dependency proceeding shifts from preserving the family to promoting the best interests of the child, including the child's interest in a stable, permanent placement that allows the caregiver to make a full emotional commitment to the child. (*In re Fernando M.* (2006) 138 Cal.App.4th 529, 534.) At the permanency planning hearing, the court has three options:

(1) terminate parental rights and order adoption as the permanent plan; (2) appoint a legal guardian for the child; or (3) order the child placed in long-term foster care. (*Ibid.*)

"Adoption, where possible, is the permanent plan preferred by the Legislature." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573 (*Autumn H.*)). If the court finds a child cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds termination of parental rights would be detrimental to the child under one of the specified statutory exceptions. (§ 366.26, subds. (c)(1)(A) & (B)(i)-(vi); *In re Erik P.* (2002) 104 Cal.App.4th 395, 401.) "The parent has the burden of establishing the existence of any circumstance that constitutes an exception to termination of parental rights." (*In re T.S.* (2009) 175 Cal.App.4th 1031, 1039.) Because a selection and implementation hearing occurs "after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will

prevail over the Legislature's preference for adoptive placement." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

Section 366.26, subdivision (c)(1)(B)(i), provides an exception to the adoption preference if termination of parental rights would be detrimental to the child because "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." Courts have interpreted the phrase " 'benefit from continuing the . . . relationship' " to refer to a parent-child relationship that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; accord, *In re Jason J.* (2009) 175 Cal.App.4th 922, 936.)

The parent asserting the exception will not meet his or her burden by showing the existence of a "friendly and loving relationship," an emotional bond with the parent, or pleasant, even frequent, visits. (*In re J.C.* (2014) 226 Cal.App.4th 503, 529; *In re C.F.* (2011) 193 Cal.App.4th 549, 555; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419; *In re L.S.* (2014) 230 Cal.App.4th 1183, 1200 ["To avoid termination of parental rights, it is not enough to show that a parent-child bond exists."].) Rather, there must be a

parental role in the child's life, resulting in a significant, positive emotional attachment from the child to parent that if severed would result in harm to the child. (*In re C.F.*, *supra*, at p. 555; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324; see also *In re J.C.*, *supra*, at p. 529 [observing that interaction between a natural parent and child will always confer some incidental benefit to the child and for the exception to apply, " 'a parental relationship is necessary' "].)

"We apply the substantial evidence standard of review to the factual issue of the existence of a beneficial parental relationship, and the abuse of discretion standard to the determination of whether there is a compelling reason for finding that termination would be detrimental to the child." (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395.) " 'We uphold judgments if they are correct for any reason, "regardless of the correctness of the grounds upon which the court reached its conclusion." [Citation.] "It is judicial action and not judicial reasoning which is the subject of review" ' " (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 876.)

II

L.G.'s sole contention on appeal is that the juvenile court erred in finding the beneficial parent child relationship exception to adoption does not apply. She asserts that the evidence showed it would be detrimental to free L.M. for adoption because L.G. shared a loving and positive relationship with the minor and a less permanent plan of guardianship would allow L.M. to be placed with the maternal relatives who have custody of her older half-siblings.⁴ Her argument is not well taken.

The evidence in the record supporting the court's conclusion that L.M. did not share a parental bond with L.G., including L.G.'s own testimony acknowledging the lack of such bond, was overwhelming. L.M., who was 19-months old at the time of the permanency planning hearing, had never lived in L.G.'s care. Further, L.M. showed no distress when visits with L.G. ended. L.M. recognized L.G. as a friendly figure in her life, and L.G.'s testimony showed her sincere love of the minor. This evidence, however, does not show the existence of a parental relationship. (See *In re Angel B.* (2002) 97 Cal.App.4th 454, 466 ["A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent."].)

Further, L.G. points to no evidence showing that severing her parental rights would be detrimental to L.M. She argues that because the maternal relatives who had placement of L.M.'s half siblings were willing to consider a guardianship of L.M., it is

⁴ In advance of the permanency planning hearing, the maternal relatives indicated they would be willing to consider custody of L.M. under a guardianship.

detrimental to L.M. to preclude this opportunity to have the chance to reunify with L.G. This assertion, however, is speculative. Any potential benefit of delaying permanency for L.M. is outweighed by the significant benefits that a permanent plan of adoption will provide. (See *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350 ["a child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child's need for a parent"].)

L.G. has not shown insufficient evidence supported the juvenile court's finding that no beneficial parent child relationship exists, or that the court abused its discretion by concluding the termination of L.G.'s parental rights would not be detrimental to L.M.

DISPOSITION

The order is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

IRION, J.

DATO, J.